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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/09-07

13 **ARCO SMOG PROS**
600 Moorpark Road
14 Thousand Oaks, California 91360
BEHNAM BASHARDOUST, OWNER

A C C U S A T I O N
[SMOG CHECK]

15 Automotive Repair Dealer Registration
No. AL 175451
16 Smog Check Station License No. RL 175451,

Respondent.

17
18 Sherry Mehl ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

22 **Automotive Repair Dealer Registration**

23 2. On or about December 29, 1993, the Bureau issued Automotive Repair
24 Dealer Registration Number AL 175451 ("registration") to Behnam Bashardoust ("Respondent
25 Bashardoust"), doing business as Arco Smog Pros. The registration will expire on November 30,
26 2008, unless renewed.

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1 **Smog Check Station License**

2 3. On or about January 20, 1994, the Bureau issued Smog Check Station
3 License Number RL 175451 ("station license") to Respondent Bashardoust. The station license
4 will expire on November 30, 2008, unless renewed.

5 **STATUTORY PROVISIONS**

6 4. Section 9884.7 of the Business and Professions Code ("Code"), states, in
7 pertinent part:

8 (a) The director, where the automotive repair dealer cannot show there was
9 a bona fide error, may refuse to validate, or may invalidate temporarily or
10 permanently, the registration of an automotive repair dealer for any of the
11 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

12 (1) Making or authorizing in any manner or by any means whatever any
13 statement written or oral which is untrue or misleading, and which is known, or
14 which by the exercise of reasonable care should be known, to be untrue or
misleading.

15 (4) Any other conduct which constitutes fraud.

16 (b) Except as provided for in subdivision (c), if an automotive repair
17 dealer operates more than one place of business in this state, the director pursuant
18 to subdivision (a) shall only invalidate temporarily or permanently the registration
19 of the specific place of business which has violated any of the provisions of this
chapter. This violation, or action by the director, shall not affect in any manner
the right of the automotive repair dealer to operate his or her other places of
business.

20 (c) Notwithstanding subdivision (b), the director may invalidate
21 temporarily or permanently, the registration for all places of business operated in
22 this state by an automotive repair dealer upon a finding that the automotive repair
dealer has, or is, engaged in a course of repeated and willful violations of this
chapter, or regulations adopted pursuant to it.

23 5. Code section 9884.13 provides, in pertinent part, that the expiration of a
24 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
25 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
26 registration temporarily or permanently.

27 6. Code section 477 provides, in pertinent part, that "Board" includes
28 "bureau," "commission," "committee," "department," "division," "examining committee,"

1 “program,” and “agency.” “License” includes certificate, registration or other means to engage
2 in a business or profession regulated by the Code.

3 7. Section 44002 of the Health & Safety Code provides, in pertinent part, that
4 the Director has all the powers and authority granted under the Automotive Repair Act for
5 enforcing the Motor Vehicle Inspection Program.

6 8. Section 44072.2 of the Health & Safety Code states, in pertinent part:

7 The director may suspend, revoke, or take other disciplinary action against
8 a license as provided in this article if the licensee, or any partner, officer, or
director thereof, does any of the following:

9 (a) Violates any section of this chapter [the Motor Vehicle Inspection
10 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

11 (c) Violates any of the regulations adopted by the director pursuant to this
12 chapter.

13 (d) Commits any act involving dishonesty, fraud, or deceit whereby
another is injured.

14 9. Section 44072.6 of the Health & Safety Code provides, in pertinent part,
15 that the expiration or suspension of a license by operation of law, or by order or decision of the
16 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall
17 not deprive the Director of jurisdiction to proceed with disciplinary action.

18 10. Section 44072.8 of the Health & Safety Code states:

19 “When a license has been revoked or suspended following a hearing under this
20 article, any additional license issued under this chapter in the name of the licensee may be
21 likewise revoked or suspended by the director.”

22 **COST RECOVERY**

23 11. Code section 125.3 provides, in pertinent part, that a Board may request
24 the administrative law judge to direct a licensee found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

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1 **UNDERCOVER OPERATION - JANUARY 15, 2008**

2 12. On January 15, 2008, a Bureau undercover operator using the alias
3 Eleanor Madrid ("operator") drove a Bureau-documented 2000 Chrysler Cirrus, California
4 License Plate No. 4PDN605, to Respondent Bashardoust's facility for a smog inspection. The
5 vehicle could not pass a smog inspection because the vehicle's positive crankcase ventilation
6 system ("PCV") was missing. Respondent Bashardoust performed the smog inspection and
7 issued electronic Certificate of Compliance No. MY048319, certifying that he had tested and
8 inspected the 2000 Chrysler Cirrus and that the vehicle was in compliance with applicable laws
9 and regulations. In fact, the vehicle could not have passed the visual portion of the smog
10 inspection because the vehicle's PCV system was missing.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 13. Respondent Bashardoust's registration is subject to disciplinary action
14 pursuant to Code section 9884.7, subdivision (a)(1), in that on or about January 15, 2008, he
15 made or authorized statements which he knew or in the exercise of reasonable care he should
16 have known to be untrue or misleading by issuing electronic Certificate of Compliance No.
17 MY048319 for the 2000 Chrysler Cirrus, certifying that the vehicle was in compliance with
18 applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of
19 the smog inspection because the vehicle's PVC system was missing.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 14. Respondent Bashardoust's registration is subject to disciplinary action
23 pursuant to Code section 9884.7, subdivision (a)(4), in that on or about January 15, 2008, he
24 committed acts which constitute fraud by issuing electronic Certificate of Compliance No.
25 MY048319 for the 2000 Chrysler Cirrus without performing a bona fide inspection of the
26 emission control devices and systems on the vehicle, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 15. Respondent Bashardoust's station license is subject to disciplinary action
4 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
5 January 15, 2008, regarding the 2000 Chrysler Cirrus, he failed to comply with the following
6 sections of that Code:

7 a. **Section 44012, subdivision (f):** Respondent Bashardoust failed to
8 perform emission control tests on the vehicle in accordance with procedures prescribed by the
9 department.

10 b. **Section 44015, subdivision (b):** Respondent Bashardoust issued
11 electronic Certificate of Compliance No. MY048319 for the vehicle without properly testing and
12 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
13 44012.

14 c. **Section 44059:** Respondent Bashardoust willfully made false entries for
15 electronic Certificate of Compliance No. MY048319 by certifying that the vehicle had been
16 inspected as required when, in fact, it had not.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 16. Respondent Bashardoust's station license is subject to disciplinary action
21 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
22 January 15, 2008, regarding the 2000 Chrysler Cirrus, he failed to comply with provisions of
23 California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Bashardoust falsely or
25 fraudulently issued electronic Certificate of Compliance No. MY048319 for the vehicle, in that
26 the vehicle could not pass a smog inspection because the vehicle's PCV system was missing.

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1 b. **Section 3340.35, subdivision (c):** Respondent Bashardoust issued
2 electronic Certificate of Compliance No. MY048319 for the vehicle even though the vehicle had
3 not been inspected in accordance with section 3340.42.

4 c. **Section 3340.42:** Respondent Bashardoust failed to conduct the required
5 smog tests on the vehicle in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 17. Respondent Bashardoust's station license is subject to disciplinary action
9 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about
10 January 15, 2008, he committed dishonest, fraudulent or deceitful acts whereby another is injured
11 by issuing electronic Certificate of Compliance No. MY048319 for the 2000 Chrysler Cirrus
12 without performing a bona fide inspection of the emission control devices and systems on the
13 vehicle, thereby depriving the People of the State of California of the protection afforded by the
14 Motor Vehicle Inspection Program.

15 **PRIOR CITATIONS**

16 18. To determine the degree of discipline, if any, to be imposed on
17 Respondent Bashardoust, Complainant alleges as follows:

18 a. On or about May 1, 2007, the Bureau issued Citation No. C07-0817
19 against Respondent Bashardoust's registration and station licenses for violations of Health &
20 Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
21 emission control devices according to procedures prescribed by the department), and California
22 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
23 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
24 compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system.
25 The Bureau assessed civil penalties totaling \$500 against Respondent Bashardoust for the
26 violations. Respondent Bashardoust complied with this citation on June 20, 2007.

27 b. On or about August 1, 2007, the Bureau issued Citation No. C08-0079
28 against Respondent Bashardoust's registration and station licenses for violations of Health &

1 Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
2 emission control devices according to procedures prescribed by the department), and Regulation
3 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
4 tested), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing
5 positive crankcase ventilation system. The Bureau assessed civil penalties totaling \$1,000
6 against Respondent Bashardoust for the violations. Respondent Bashardoust complied with this
7 citation on September 26, 2007.

8 c. On or about October 15, 2007, the Bureau issued Citation No. C08-0344
9 against Respondent Bashardoust's registration and station licenses for violations of Health &
10 Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
11 emission control devices according to procedures prescribed by the department), and Regulation
12 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
13 tested), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing fuel
14 evaporative canister. The Bureau assessed civil penalties totaling \$2,000 against Respondent for
15 the violations. Respondent Bashardoust complied with this citation.

16 **OTHER MATTERS**

17 19. Under Code section 9884.7, subdivision (c), the director may invalidate
18 temporarily or permanently or refuse to validate, the registrations for all places of business
19 operated in this state by Behnam Bashardoust, doing business as Arco Smog Pros, upon a finding
20 that he has, or is, engaged in a course of repeated and willful violations of the laws and
21 regulations pertaining to an automotive repair dealer.

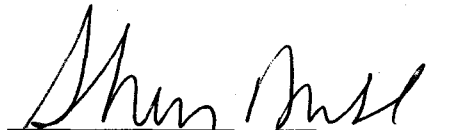
22 20. Under Health & Safety Code section 44072.8, if Smog Check Station
23 License Number RL 175451, issued to Behnam Bashardoust, doing business as Arco Smog Pros,
24 is revoked or suspended, any additional license issued under this chapter in the name of said
25 licensee may be likewise revoked or suspended by the director.

26 **PRAYER**

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein
28 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AL 175451, issued to Behnam Bashardoust, doing business as Arco Smog Pros;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Behnam Bashardoust, doing business as Arco Smog Pros;
3. Revoking or suspending Smog Check Station License Number RL 175451, issued to Behnam Bashardoust, doing business as Arco Smog Pros;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Behnam Bashardoust;
5. Ordering Behnam Bashardoust to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: 7/28/08


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant